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Supreme Court, U.S.
FILED
AUG 14 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-2141

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

HARVEY H. TODA,

Petitioner,

CITY AND COUNTY OF HONOLULU

Respondent.

PETITION FOR WRIT OF CERTIORARI

To The United States Court of Appeals

FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

HARVEY H. TODA, pro se
1363 Hoowali Street
Pearl City, Hawaii
96782
Telephone: (808) 456-1328

QUESTIONS PRESENTED FOR REVIEW

A PREJUDGMENT of the case occurred and an oral argument requested en banc was turned down, by the Ninth Circuit Court of Appeals.

CONSPIRACY in TORT is the reason for this case as explained to Court in the first de-novo case wherein the Summary Judgment was DENIED.

The request for a TRIAL, TRIAL BY JURY, was submitted for this case.

Upon a request for a DEPOSITION by the City, it was completed. The City Attorney stated that if he was to admit that the sub-allegations were true, would I sign-off the suit?

I stated I would, and, the following statements were made: That, DUE PROCESS OF LAWS, INFRINGEMENT OF CONTRACTUAL RIGHTS, PROCEDURAL DUE PROCESS, EX POST FACTO violation, Violation of the Initia-

tive "Notification" Ord. 84-111, the injury to the family under Section 2-102 Purposes...., the Civil Rights Act violation under the Constitution, and CONSPIRACY under Criminal Law, were signed under an Agreed-Statement that no SUIT will follow in regards to the CONSPIRACY case under this number, but CONSPIRACY under TORT will continue. There were two separate cases that were signed. Because it was believed that everything is correct and Petitioner couldn't read too well, it were signed. (Now, with the cataract surgery, I can see better. 1988) When the 2nd de-novo case came up, the Court asked if I had signed the papers. I stated, "Yes, I did" and it was affirmed that a SUMMARY JUDGMENT now existed.

It is still believed that CONSPIRACY in the TORT sense, is to be adjudicated.

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HARVEY H. TODA, pro se

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CITY AND COUNTY OF HONOLULU,

a Municipal Corporation,

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Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITIONER'S REPLY BRIEF

STATEMENT OF THE CASE

This is an appeal by Plaintiff from the Ninth Circuit's affirmation of the Court's Order Granting Motion for Summary Judgment.

This is Lot 1 of 56 lots with a 40 feet driveway submitted under "Sunset View Lots"tract as situated on Welelau Place, Aiea Heights, State of Hawaii, and containing an area of 203,844 square feet. Though the agricultural zone was promised "AA" residential by Resolution 81 of the City and County of Honolulu, Board of Supervisors(a Territory then) in 1942, it was accepted and filed as "AA" residential in 1949, as Sunset View Lots and kept as residential till 1982. In 1969, Ordinance 3234 Comprehensive Zoning Code grandfathered Sunset View Lots from "AA" residential to "R-3" residential, and it now became a misdemeanor, outlawing clause negated. In 1978, Prosecutor of the Tax Appeal Court stated with Resolution 81 that the property was still R-3 residential, and an AGREED STATEMENT closed the case of 1798.

In the Respondent's Brief in Opposition, in the APPENDIX A on page 1a, the ENABLING ACT of the Hawaii Revised Statutes (1985) under Section 46-4 COUNTY ZONING.(a), the fifth paragraph PROVIDES:

> "Nothing in this section shall invalidate any zoning ordinances or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957."

Thus, it is believed that CONTRACTS RIGHT existed in that, in creating Ord. 81-79, it was necessary to notify owner of the possible changes--but it was never done, and Ord. 81-79 became Law in contradiction to Ord. 3234 of 1969. Since the owner was never notified, then Ord. 82-62 with OWNERSHIP NOTED, avoided NOTIFICATION by LAW, under Section 101-20 Notice, HRS; (see page 5a of Appendix A of Brief in opposition) painted out residential to preservation and gave a newspaper notification as a LEGISLATIVE ACT ONLY. This

case negated lot 1 from residential to preservation but CONTINUED ON IN CODE 1 designation of real property VALUATIONS till June 30, 1983. NO ONE NOTIFIED THE OWNERS, and TAXES WERE PAID. The City had RIGHTS to REFUND this Overtaxation, but they did not. (The City claims they had too much work to do, and could not do this refunding, in 1-29-88)

On the next VALUATIONS from July 1, 1983 till June 30, 1984, the SAME TAXES FOR RESIDENTIAL WAS PAID. Now, the Code 1 indicated Code 8 for preservation, but TAXES REMAIND THE SAME FOR RESIDENTIAL. The Appeal Date of April 9, 1983 was passed. The Municipal Rights allowed "compromise" under the City's Law but it was never extended, even when asked for same.

PERMIT DENIED. About mid-October 1983, upon request for a Permit to build a house, the Land Use office stated that

the land was PRESERVATION and no house could be built onto same.

The Assessor was questioned but he failed to give any reason other than to do his work over and over as before.

On 4-9-84, an appeal submitted to the Board of Review corrected from July 1, 1984 to June 30, 1985 from the old VALUATION of $93,106 to New VALUATION of $28,078; and it was taxed annually for $189.53.

The irrelevant necessity to change the zoning may have taken place but, it was an application to the Department of General Planning to cut the TAXES down for down-zoning the land.

The land was up-zoned partially by the City Council. The Assessor then, raised the TAXES too high, and without the exemptions as given by law, nor in the incomplete water-easement of lot 1.

Ordinance 86-96 was on public sale from October 22, 1986, and within 30 days this CONSPIRACY case was initiated under DC CV 86-1069.

The Summary Judgment case through the U.S. Court of Appeals of the Ninth Circuit is Case #87-2820.

It is now under a Writ of Certiorari with the U.S. Supreme Court case 88-2141.

DISCOVERY: For the year July 1, 1987 to June 30, 1988, a TAX COURT CASE #2485 was initiated that, the partial R-10 residential VALUATION with P-2 preservation VALUATION, totally was $213,664 and the Court cut it down to $89,586 for Jan. 1, 1987. The 15% deduction for water-easement and 50% deduction for "NO PASS ZONE" was included. Municipal Law violations of MARKED deductions and INCOMPLETED municipal Law violations was not included. The Award did not give any deductions for the Government exemptions. It had gone to the Hawaii Supreme Court for 12975 but denied and thus it was applied to the U.S.District Court under 8900087 DAE for the Government exemptions and this unrefunded overtaxation. Under res judicarta this case is also under Summary Judgment. It is pending an appeal. The judgment AWARD shows it is too high.

CONSPIRACY: The Damage Suit includes the following:

1. Overtaxation as PAID, known by the government but unknown by Petitioner, is a part of the first conspiracy.

2. Overtaxation as PAID, known by the government code 8 involved but unknown by Petitioner, is the 2nd conspiracy.

3. Overtaxation as PAID, known by the government code 8 involved, now known by the Petitioner, is the 3rd conspiracy.

4. Overtaxation as PAID under 1, 2, 3, known by the government under Ord. 82-62 with Affidavit from Raymond Yamashita of disregarding steep slopes of land and also information from Mayor Eileen Anderson that the steep slopes of land was in violation of Ord. 81-79, that the preservation was made against residential zoning, though it violated Ord. 3234 and Ord. 81-79 as tie-in of Ord. 85-46, and as tie-in

under 86-133 of Exhibit 15 of Ord. 86-96.

Of 86-133 it carries under: Section III. Previous Unilateral Agreements

> All conditions of unilateral agreements adopted under previous zoning map amendments shall continue in full force, and shall not be affected by zone changes enacted by this ordinance.

This is the 4th conspiracy.

5. Overtaxation as PAID under 1, 2, 3, known by the government but failed to inform owners or Petitioner, violated the Constitutional Law under Amendment 14 of "due process" and "equalization" and in violation of the Hawaii Revised Law Sec. 101-20 Notify of failure to notify known persons excepting by news article only. This is the 5th conspiracy.

6. Discovery: Careful checks indicated that the Municipal Law was created under an Initiative. That, it was a cooperation, and it represented one-person.

Section 1-101 Incorporation, provides the City with perpetual succession.

Section 1-103 Structure of Government--

> The government provided by this charter shall consist of two coordinate branches to be known as the "Legislative Branch" and the "Executive Branch."

This is the 6th Conspiracy. The U.S. Constitution does not allow this.

7. Overtaxation as PAID under 1,2,3, failed to accept Art. 1 Sec. 10 "infringement of Contracts" as provisioned under Section 46-4 AMS; provisioned:

> "Nothing in this section shall invalidate any zoning ordinances or adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957."

This is the 7th Conspiracy.

8. After downzoning, we now have a picture of upzoning. It again troubles Petitioner in that prices are too high: From downzoning of residential to preservation, the same amount of taxes were

PAID. With an acre of land made residential, both residential and preservation discovered to be $213,664. Previously, with all residential of 4½ acres, it costs about a VALUATION of $93,000. With an appeal under Case 2485, the Assessor lowered it, the Attorney lowered it, and the Court lowered it further. However, the Court failed to complete the 4 reasons for jurisdiction, and the AWARD was extended to PETITIONER.

9. Over taxation as PAID under 1, 2, 3, violates a misdemeanor crime under Ord. 3234, by another misdemeanor crime under Ord. 86-96; of Art. 1 Section 10, "ex-post facto" violated by the State.

Dated: Honolulu, Hawaii, August 8, 1989.

Respectfully submitted,

Harvey H. Toda

Harvey H. Toda, pro se
1363 Hoowali Street
Pearl City, Hawaii 96782

APPENDIX

Lot 1 Sunset View Lots 9-9-19: 01

1. Thomas Y. Yoon (s/P) (T/C)
   (For 1949 fr 9-9-7-3) 203,844 s.f.

2. Kam Tai Lee (S/P)

3. Kam Tai Lee (S/P) D: 10/21/49 fr Yoon
   203,844sf $10. 11/4/49 Bk 2271/303
   203,844 s.f.

4. Irwin M. Chelf (m)

5. Covell C. Flesner (m) D: 3/10/51 fr
   Lee 203,844sf R.S.$9.90 3/19/51
   Bk 2442/88 (w/9-9-15-17) 203,844s.f.

6. Albert W. Lesser (m)

7. Alexander S. Farm & Wf Violet Chee
   (T/E) D: 2/9/59 fr Chelf etal
   203,844sf RS $16.50 3/9/59
   Bk 3579/370 203,844s.f.

8. Harvey H. Toda & wf Janet K (T/E)
   D: 8/13/63 fr Farm & wf 203,844sf
   RS $33.00 8/31/63 Bk 4578/542
   203,844 sf.

9. Harvey Haruyoshi Toda Trust 1/2 Int
   D-5/10/84 CT none 5/14/84
   Bk 17870/451(HHToda and JK Toda Trs)
   203,844s.f.

10. Janet Kichino Toda Trust 1/2 Int

Certified to be a true and correct
copy of the original on file in
this office.
S/S Richard Nathaniel
Assessor Real Property Assessment Sec.
Date: 1-24-89

SunPress April 3-9, 1986

By Curtis Lum Aiea Heights page 1

AIEA RESIDENTS PROTEST REST HOME ADDITION PLAN

A proposed expansion of the Aiea Heights Rest Home has drawn a flood of criticism from nearby residents, who claim that the addition will increase existing sewage and runoff problems.

Sammy and Remedios Sonson, owners of the rest home at 99-552 Aiea Heights Drive have filed for a conditional use permit with the city's Department of Land Utilization to expand its current operation from 28 beds to 62 beds.

In their application to the city, the owners proposed to build a two-story addition in the 42,523 square foot lot. They said that because the property is now used for a rest home, the addition "should not have any significant adverse impact on the adjacent property owners."

But some nearby residents disagree with the owners and claim that the addition, with a proposed paved parking lot, will have a negative affect on the neighborhood.

State Rep. Tom Okamura, D-41st District (Aiea-Halawa), said he has received many complaints from neighbors who expressed concerns about the expansion plan.

Okamura said he and City Councilman Arnold Morgado were to meet with the residents to hear their complaints and then present the concerns to the rest home owners on a later date.

Currently, there are no public sewer lines to the home, and an adjacent resident said the rest home's sewage has been overflowing from a cesspool for the past 14 years.

Nobuo Konno, who has lived next to the rest home since 1972, said he has

complained about the overflow since he moved there but the only solution offerred by the City was the occational pumping of the cesspool.

He said he is concerned that an increase in patients would put an added burden on the already overloaded sewage system.

Konno also told the Sun Press that during heavy rains, the water and mud from thehome's grounds washes onto his property. He said the plans to pave over a portion of a grass area for a 13-stall parking lot would increase the problem.

Lillian Malzman, the rest home's administrator, said the owners plan to deal with the sewage problem by digging new cesspools. She said this should meet the home's needs until a proposed City sewer line is installed in 1989.

Malzman said she is not sure how the flooding problem will be delt with, but she is sure the project's engineers are addressing the problem.

Konno said he is not satisfied that another cesspool will solve the problem because of the current cesspool's history of overflowing and the stench that it produces.

There are also questions whether there is a need to expand the current rest home.

Malzman said that although the home normally averages about five vacancies at any one time, she is certain there will be no problems filling the extra beds.

"People will be more anxious to go in a spanking new facility than an old one," she said of the 26 year-old home. Malzman added that the state Department of health has said there will be a need

for more beds during the next few years.

The new section's basement will contain nurses quarters and a kitchen, the application said. Proposed for the first floor are a dining/recreation room as well as bedrooms. Plans for the second floor call for a kitchen facility, a dining/recreation area, and nine bedrooms.

The date for a public hearing on the application has not been set, but a DLD spokesman said it should occur within the final two weeks of April.

SUN PRESS July 24 to 30, 1986

By DAVID WHITE, news Editor at Large
Pearl City PAGE 1

PEARL CITY COUPLE HOPES COUNCIL WILL RESTORE DREAM

Janet and Harvey Toda of Pearl City are hoping that the city will give them back at least a quarter of their dream for a comfortable retirement.

Twenty-three years ago, the Todas bought about 4½ acres of residentially zoned land at the end of Welelau Place in Aiea Heights.

And for the past 20-some-odd years the Todas did what good citizens are supposed to do. They scrimped and saved and somehow always managed to make the monthly mortgage payment until the loan was finally repaid.

They paid their property taxes on time, too.

Finally, ready to build their dream

retirement home, and perhaps subdivide their property to add to a comfortable nest egg, the Todas retained the services of a contractor to design the home.

It was at that point in late 1983 that Harvey Toda, when he went to City Hall to obtain a building permit, learned that his property had been "down-zoned" nearly a year earlier from residential to preservation use.

Toda got a fast lesson in Honolulu land use controls. He also learned about something called "development plans."

It seems city ordinance 81-79, approved Nov. 25, 1981, included his property in a "primary urban center development plan." The plan proposed that Toda's land be designated for preservation use.

A year later by Ordinance 82-62 signed into law by then Mayor Eileen Anderson on Dec. 23, 1982. Toda's pro-

perty was officially rezoned to preservation.

But while all of the rezoning was going on, no one bothered to tell Janet and Harvey Toda.

"While these two ordinances were being passed, nothing was mentioned to me that we were being tied in with this case," Harvey Toda said.

Toda began to ask around City Hall how the zoning on someone's property could be changed without the owners being told.

City officials told Toda that he should've kept abreast of the City's new "development plan" approach to land use by reading the newspaper.

"Maybe some(people) knew about all of this by reading the paper, but I didn't," Toda replied.

Being a trusting soula, Toda then

asked city bureaucrats what he could do to change things back to how they were.

Go to court and sue, if you think you have a chance was the response.

There was one more annoying surprise awaiting the Todas. Although their land was down-zoned in December 1982, they continued to be taxed at the much higher residential property rate until June 30, 1984.

"I told them (city tax collectors), "That's not fair. How could you down-zone my property and nobody told the tax division?"

The Answer? They told me it was my responsibility to appeal it," he said.

So Toda appealed his tax bill. And he won that battle--" he now pays a much lower tax bill on his preservation property. Now he's on the process of appealing the zoning, too.

The City Planning Commission voted last week to recommend to the City Council that at least one acre of Toda's 4.68-acre parcel be rezoned for residential use.

The council will probably vote on the matter later this year.

"I've been whistling all this time," Toda said. "If they can find a case to give me back one acre, maybe there's a case to give me back the whole thing back of course, if possible. But we just have to wait. Everybody asks me, "Why don't you go to Court and sue?"

"But, if I can do without that, fine. I don't even have an attorney yet, but they haven't turned me down yet. As soon as they turn me down, well, then I guess I would have reason to get an attorney."

One more thing bothers Toda. Since

1975 the city has made clear its intentions to construct a sewer line across his Aiea Heights property, and to build a sewer pump station on a small portion of it.

Toda said he can't help but wonder if his land was downzoned so that the city could avoid paying a higher price for that section of his property that will have to be condemned for the sewer project.

"I am 68 now, almost 69. I'm running out of time to build on that land, but maybe I can get enough of it back to give to my grandchildren."

"Going through all of this makes me wonder if I'll even see a house built there. Maybe my grandson will. I don't know about me."

STATEMENT OF RELATED CASES

Ordinance 84-111, notification of ownerships to owners, leasees, & others as co-owned, is now at the Hawaii Supreme Court for adjudication.

Pending decision.

Petitioner is not aware of other cases.

CERTIFICATE OF SERVICE

I, Harvey H. Toda, provides 3 copies of this report under 88-2141 a REPLY for the Writ of Certiorari, through the Sheriff's Office of the State of Hawaii, to:

CITY AND COUNTY OF HONOLULU
Richard D. Wurdeman
Corporation Counsel
Maria C. Avinante-Tanaka
Deputy Corporation Counsel
530 S.King & Punchbowl Sts.
Honolulu, Hawaii 96813
telephone: (808) 523-4704

Attorneys for Respondent

DATED: Honolulu, Hawaii, August 15, 1989.

Harvey H. Toda pro se
for Petitioner

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

No. 88-2141

HARVEY M. TODA,

Petitioner,

V.

CITY AND COUNTY OF HONOLULU,

Respondent.

PROOF OF SERVICE

State of Hawaii)
) SS.
City and County of Honolulu)

Affiant, HARVEY M. TODA, after being duly sworn, disposes and says that pursuant to Court rules he served the within papers of REPLY BRIEF, to:

CITY AND COUNTY OF HONOLULU, a Municipal Corporation and James DOES, also a part of the Municipal Corporation.

Richard D. Wurdeman
Corporation Counsel
Maria C. Avinante-Tanaka
Deputy Corporation Counsel
Honolulu, Hawaii 96813

Attorneys for Respondent
City and County of Honolulu

Serviced by:

Sheriff Officer Norman K. Hanneken

Date 8-9-89

Received by [signature]

Date 8/9/89

Position Dep Corp Counsel

[signature]
Harvey H. Toda Affiant
pro se for Petitioner

Subscribed and sworn to before Me
tnis 9th day of August, 1989.

[signature]
Notary Public
City and County of Honolulu
State of Hawaii

My Commission expires on:
10/25/92

JENNIFER [illegible] 10/25/92
NOTARY PUBLIC
STATE OF HAWAII